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Attorneys for Defendant Kevin I. Dowd

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NIGHTINGALE & ASSOCIATES, LLC,

Plaintiff,

v.

KEVIN DOWD,

Defendant.

DOCKET NO.

Civil Action

NOTICE OF REMOVAL

**TO THE CHIEF JUDGE AND HONORABLE JUDGES OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY**

Defendant Kevin I. Dowd, by and through counsel, hereby files the within removal petition in accordance with 28 U.S.C. § 1446, and respectfully shows:

PARTIES

1. Defendant Kevin I. Dowd ("Dowd") is a citizen of the State of Nevada residing at 631 North Stephanie Street, #216, Henderson, Nevada 89014 and, thus, is domiciled in the State of Nevada.

2. Plaintiff Nightingale & Associates, LLC ("Nightingale") is a Delaware limited liability company which maintains its principal place of business in the State of Connecticut.

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3. Nightingale's current and/or former members are Dennis J. Duckett, Michael R. D'Appolonia, Howard S. Hoffman, Pierre Benoit, Timothy Hassenger, Douglas Hopkins, and James Neidhart. Upon information and belief, they are domiciled as follows:

(a) Dennis J. Duckett is a citizen of the State of Massachusetts, residing in Wellesley, Massachusetts;

(b) Michael R. D'Appolonia is a citizen of the State of Maine, residing in Harrison, Maine;

(c) Howard S. Hoffman is a citizen of the State of New York, residing in New Rochelle, New York;

(d) Pierre Benoit is a citizen of the State of Arizona, residing in Scottsdale, Arizona;

(e) Timothy Hassenger is a citizen of the State of California, residing in Pasadena, California;

(f) Douglas Hopkins is a citizen of the State of New Jersey, residing in Sparta, New Jersey;

(g) James Neidhart is a citizen of the State of Connecticut, residing in Stamford, Connecticut.

BACKGROUND

4. On or about September 10, 2009, Nightingale, through counsel, filed an Amended Complaint and Jury Demand in the Superior Court of New Jersey, Law Division, Bergen County, entitled Nightingale & Associates, LLC v. Kevin Dowd, bearing docket number L-7099-09. Annexed hereto as Exhibit "A" is a true and correct copy of Nightingale's Amended Complaint and Jury Demand and Civil Case Information Statement.

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5. Dowd received service of Nightingale's Amended Complaint on October 10, 2009. Attached hereto as Exhibit "B" is a true and accurate copy of the Certification of Service of Process filed by Plaintiff with the Superior Court of New Jersey.

6. The attached Amended Complaint, Civil Case Information Statement and Certification of Service of Process constitute all of the pleadings served upon and known to Dowd. The original complaint (filed with the Superior Court of New Jersey) was never served upon Dowd.

7. In filing this removal petition, Dowd does not waive any affirmative defenses arising from defects in the service of process or any other defenses available under Rule 12 of the Federal Rules of Civil Procedure, including but not limited to the defenses for lack of jurisdiction, improper venue, insufficient process and/or improper service of process.

8. In accordance with 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days of service of Nightingale's Amended Complaint upon Dowd.

JURISDICTION

9. This action is removable under 28 U.S.C. § 1441(a). There is complete diversity of citizenship between the Plaintiff, Nightingale, its members, and Dowd, as reflected in ¶¶ 1-3 of this notice of removal.

10. The amount in controversy, as alleged in the Amended Complaint exceeds the sum of \$75,000, exclusive of interest and costs. *See* Exhibit "A" at ¶ 22 (alleging that Dowd is indebted to Nightingale in the sum of not less than \$84,078.76). Accordingly, this is a civil action over which the United States District Court has original jurisdiction under 28 U.S.C. § 1332(a) and, therefore, this civil action may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

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11. Notice of this removal petition is being filed contemporaneously with the Superior Court of New Jersey, Law Division, Bergen County. Attached hereto as Exhibit "C" is a true and accurate copy of the notice being filed with the Superior Court of New Jersey regarding the removal of this action.

WHEREFORE, Defendant Kevin I. Dowd prays that this case proceeds in its entirety in this Honorable Court as an action properly removed under and pursuant to 28 U.S.C. §§ 1441(a) &
1446.

STARK & STARK
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By: _____

SCOTT I. UNGER

Dated: November 9, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2009, I electronically filed Defendant Kevin I. Dowd's removal petition with the Clerk for the United States District Court, District of New Jersey, and sent notification of such filing as follows:

Via Federal Express:

Clerk, Superior Court of New Jersey
Law Division, Bergen County
10 Main Street
Hackensack, New Jersey 07601

Via Regular Mail & Facsimile:

Marc J. Gross, Esquire
Greenbaum, Rowe, Smith & Davis, LLP
75 Livingston Avenue, Suite 301
Roseland, New Jersey 07068
(Fax) 973-535-1698
Counsel for Plaintiff Nightingale & Associates, LLC

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By: _____

SCOTT L. UNGER

Dated: November 9, 2009

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